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JUDGING JUDGES: THE IMPEACHMENT OF FEDERAL JUDICIARY MEMBERS

A Thesis

Submitted to the Graduate Faculty of the
University of New Orleans
in partial fulfillment of the
requirements for the degree of

Master of Arts
in
Political Science

by

Jennifer Goguen

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Abstract

There are many facets of impeachment that warrant examination. The impeachment inquiries of individual presidents and federal judges have all been studied in depth, but one aspect of impeachment still remains fundamentally unexplored: Under what circumstances will the House of Representatives vote to impeach a federal judge?

This thesis is a systematic, empirical study of the impeachments of federal judges. All 65 impeachment inquiries brought against federal judges over the last 209 years are studied in order to assess a number of factors across every federal judicial impeachment inquiry in order to draw conclusions about the conditions under which federal judges are impeached. I will test six hypotheses and draw conclusions from the results in order to determine if any of these factors help explain why the House of Representatives has voted to impeach some federal judges but not others.

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Introduction

Congress can remove a government official from office through the impeachment process. The Constitution gives the sole power of impeachment to the House of Representatives and the sole power to try all impeachments to the Senate. At the time of the drafting of the United States Constitution, impeachment was a customary process in English law. Parliament developed the impeachment process as a means to exercise some measure of control over the King and his appointees. Since the King could not be impeached, Parliament established supremacy over the King by creating a process to remove his ministers. Adopting the procedure from the British, the Framers of the Constitution incorporated the process of impeachment into the foundation of the United States government. The Constitution provides a broad definition of impeachment which encompasses the entire process. Article II, Section 4 states, “The President, Vice President and all Civil Officers of the United States, shall be removed from Office on Impeachment for, and conviction of Treason, Bribery, or other High Crimes and Misdemeanors.”

In particular, the terms “Treason, Bribery, or other High Crimes and Misdemeanors” were adopted from English law (Berger 1973: 54). There are only two named offenses contained in this provision, which leaves room for a broad interpretation of “High Crimes and Misdemeanors.” Scholars debate about how this phrase should be interpreted, and one scholar has referred to it as “the most controversial and misunderstood Constitutional provision” (Stelle 1999). Furthermore, the constitutional language “all civil officers” includes such positions as federal judgeships as well as executive appointments. The Constitution therefore empowers the

legislative branch to remove elected and appointed government officials from office as well as those with life tenure.

Since 1797, there have been 91 impeachment inquiries against government officials: one legislative branch official, twenty-five executive branch officials, and sixty-five federal judges. Seventeen officials have ultimately been impeached: one legislative branch official, three executive branch officials, and thirteen federal judges. Intriguingly, the impeachment charges were dismissed for the one legislative official and three executive officials. On the other hand, seven of the 13 federal judges were convicted. Thus, this study will focus on assessing the sixty-five impeachment inquiries against federal judges. I will examine these sixty-five cases to determine the factors and conditions that increase the likelihood a federal judge will be impeached. Since only 20% of all impeachment investigations of federal judges resulted in impeachment, there are likely to be conditions that need to be present in order for a federal judge to be impeached. This study, therefore, will focus on examining political and personal factors that may increase the likelihood of impeachment.

The impeachment process¹ begins when the House Judiciary Committee receives an allegation of misconduct about an elected or appointed official. The Judiciary Committee then deliberates over whether to initiate an impeachment inquiry. If the Judiciary Committee feels the allegations are credible, it will present a resolution seeking authority from the entire House to proceed with the inquiry. If a majority of the House approves the impeachment inquiry resolution, the Judiciary Committee will investigate the charges against the government official

¹ While the “impeachment process” is often used to refer to the actions of the House of Representatives and the Senate, for purposes of this study the impeachment process refers to only the proceedings in the House. Furthermore, an impeachment inquiry is the investigation by the House Judiciary Committee of whether or not to present Articles of Impeachment to the full chamber based on the charges against the official.

and prepare the Articles of Impeachment.² The House then votes on each of the articles, and, an official is formally “impeached” and will be subject to a trial in the Senate if one Article of Impeachment is approved by a majority of the House. With the Vice President presiding,³ the Senate holds a trial, and the Senators act as a jury as they listen to the articles of impeachment approved by the House. At the conclusion of the trial, the Senate votes on whether to remove the official from office. In order to be removed from office, a two-thirds vote of all the Senators present is required.

The first impeachment proceeding against a United States official occurred in 1797 against Senator William Blount. Since that time, no other Senator or member of the House of Representatives has been impeached, because the defense counsel argued that members of the Legislative Branch are not “civil officers” within the meaning of the impeachment clause and, therefore, are not subject to impeachment. The impeachment proceedings that followed Blount, however, have been limited to members of both the Executive and Judicial Branches. Through the study of individual impeachment cases throughout history, we have come to learn more about the intricacies of the power of impeachment.

The following table lists every elected and appointed government official the House of Representatives has voted to impeach since the founding of the Republic.

² Each Article of Impeachment is a formal charge against the official, and conviction on any one article is sufficient for removal from office.

³ The Vice President presides over all impeachment trials with the exception of cases involving a president. If a president is tried for impeachment in the Senate, the Chief Justice of the United States Supreme Court presides.

Table 1
List of all Impeachments

Government Official	Office	Year Impeached	Outcome in the Senate
William Blount	Senator (TN)	1797	Charges Dismissed
John Pickering	District Judge (NH)	1803	Convicted
Samuel Chase	Supreme Court Justice	1804	Acquitted
James Peck	District Judge (MO)	1826	Acquitted
West Humphreys	District Judge (TN)	1862	Convicted
Andrew Johnson	President	1867	Acquitted
Mark H. Delahay	District Judge (KS)	1873	Resigned
William Belknap	Secretary of War	1876	Acquitted
Charles Swayne	District Judge (FL)	1903	Acquitted
Robert Archbald	Judge Commerce Court	1912	Convicted
George English	District Judge (IL)	1926	Resigned
Harold Louderback	District Judge (CA)	1932	Acquitted
Halsted Ritter	District Judge (FL)	1936	Convicted
Harry Claiborne	District Judge (NV)	1986	Convicted
Alcee Hastings	District Judge (FL)	1988	Convicted
Walter Nixon	District Judge (MS)	1988	Convicted
William Clinton	President	1998	Acquitted

Source: The author.

While the study of impeachment is vast, especially studies of presidential impeachments, this thesis will focus on the more frequent yet comparatively understudied judicial impeachments. There are several important questions that remain as to why judicial impeachments occur. For example, are these impeachments a direct result of the actions of particular federal judges? Or, does the relationship between Congress and the judiciary have an impact on whether or not an impeachment occurs? By examining all of the impeachment inquiries of federal judges in United States history, I will assess the circumstances under which the House of Representatives will vote to impeach federal judges.

⁴ Table 1 was compiled by the author of this thesis.

Literature Review

Social scientists, historians, law professors, and Members of Congress have all weighed in on the topic of impeachment. While there is an abundance of articles and books on impeachment, most authors look at one specific impeachment case (see, e.g., Benedict 1973; Bose 2001; Melton 1998; Turner 1949) or the historical premise for impeachment and how the Constitution has been interpreted over time (Berger 1973; Bowman 1999; Brant 1972; Dougherty 1913; Fields 1978; Gerhardt 2000; McDowell 1999; Stelle 1999; Tribe 1999). In the vast majority of the studies, the actual impeachment inquiries provoked many of the scholars to write about the topic. In other words, scholars tend to respond to the landmark impeachment trials by writing about the subject while it is ongoing or immediately after (Benedict 1973; Berger 1973; Pious 1998). This typically occurred after the presidential impeachment inquiries of both Presidents Richard M. Nixon and William Jefferson Clinton (Fields 1978; Jacobson 1999; McDowell 1999; Stelle 1999; Tribe 1999). More importantly, political scientists have not written extensively about this topic, and none have provided a systematic inquiry about the factors that affect impeachments in general.

Most impeachment scholars emphasize constitutional history (see, e.g., Brookhiser 1998; Dougherty 1913; Gerhardt 2000; McDowell 1999; Scherr 2002). Focusing on the Framers' intent concerning impeachment, they argue that impeachment is a comprehensive and important power. They all conclude that there needs to be a means to remove government officials, especially those who are appointed for life and who have committed acts not worthy of a public official. Therefore, the study of impeachment is significant to our understanding of constitutional history and how we have defined this power over the past two centuries.

When Members of Congress consider whether an official should be impeached, they look at the type of allegations against the federal official to determine if the accusations are “High

Crimes and Misdemeanors.” The first constitutional lawyer to provide an in-depth look at impeachment and how allegations help define this power was Raoul Berger in 1973. In his writings, he discusses the phrase “High Crimes and Misdemeanors” and how it has been interpreted over the years. Berger attempts to differentiate between “high misdemeanors” and criminal misdemeanors in trying to define the phrase put forth by the Framers. Berger concludes that the grounds for impeachment are not restricted to indictable offenses. Based on his research of impeachments in England, Berger determines that there are seven basic categories of “High Crimes and Misdemeanors” or indictable offenses: misapplication of funds, abuse of official power, neglect of duty, encroachments on parliament’s powers, corruption, betrayal of trust, and giving destructive advice to the Crown (73-75).

Turner (1949) studied the impeachment of John Pickering, the first federal judge to be impeached under the United States Constitution in 1803. More importantly, Turner argues that the decision in the Pickering case set a precedent, because he was impeached for “misbehavior,” specifically drunkenness and unlawful rulings, rather than an indictable offense (Turner 1949: 487). During this period, President Jefferson and the Democratic-Republicans wanted to remove Federalist judges because of their differences on how to run the country. Therefore, the Democratic-Republican Members of Congress were more willing to interpret the Constitution loosely in order to provide grounds on which to impeach federal judges. However, future cases did not follow this precedent exclusively, as many impeachment inquiries of federal judges for “misbehavior” were dismissed because the Members of the House concluded that “misbehavior” was not covered under “High Crimes and Misdemeanors.” During the impeachment process,

⁵ Based on his research of impeachments in England, Berger determines that there are seven basic categories of “High Crimes and Misdemeanors” or indictable offenses: misapplication of funds, abuse of official power, neglect of duty, encroachments on parliament’s powers, corruption, betrayal of trust, and giving destructive advice to the Crown (73-75).

the House of Representatives must interpret the phrase “High Crimes and Misdemeanors” in order to determine whether or not the accused official should be impeached and stand trial. However, no study has addressed whether the type of allegations against the official provides insight as to of when an official, and in particular, a federal judge, is more likely to be impeached.

While the types of allegations are important to the study of impeachment, the political issues at the time of the impeachment are also important. Michael Gerhardt (2000a) looks at the federal impeachment process in general and concludes that, despite the constitutional ambiguities and historically stated concerns about Congress’ fitness to conduct impeachment proceedings, the constitutional process has generally worked quite well. Most importantly, Gerhardt states that impeachment is a political rather than a legal proceeding. In other words, Members of Congress consider issues beyond the specific accusations against the government official. Richard M. Pious (1998) argues that Congress determines impeachment based on “popular law” rather than constitutional law; this means that it is what the public supports that determines if Congress impeaches a government official. Likewise, some scholars provide commentary on why presidential impeachment is a political activity (Benedict 1973; Berger 1973; Brant 1972).⁶ These scholars assert that presidential impeachment political because the House and Senate take into account not only the accusations against the person accused, but also the political environment at the time of the impeachment. This argument suggests that political factors may play a major role in the impeachment process. Looking at the specific political issues that may

⁶ Gary C. Jacobson (1999) conducted one of the few quantitative analyses on the consequences of impeachment. He discussed how the impeachment of President Clinton affected the congressional elections and concluded that it didn’t, given that the voters maintained the status quo with many of the incumbents winning back seats in the 1998 elections.

impact the decision of the House of Representatives with respect to impeachment, therefore, is an important focus of this study.

Melton (1998), a constitutional historian, carefully studied and wrote about the case of Senator William Blount. He concludes that the accusation against Blount was based on the emotions of the Members of Congress rather than the criminal allegation against the Senator. This finding suggests that we not only have to focus on what act a judge is accused of committing, but also what is going on at the time of impeachment. In other words, the political environment may be more important than the specific allegation against the judge.

There is an abundant amount of literature on presidential impeachments (Benedict 1973; Bose 2001; Fields 1978; Ho 2000; Mauro 2004; Pious 1998; Rehnquist 1992). Comparatively, however, there is not much literature about the removal of federal judges. While some scholars briefly discuss the impeachment of federal judges (Berger 1973; Gerhardt 2000; Thomas 1908), there are only two studies that focus solely on federal judicial impeachments, and both examine only one particular judge or justice's case (Rehnquist 1992; Turner 1949).

Berger (1973) investigates whether judges can be removed by means other than impeachment. By looking at alternative ways to remove federal judges, Berger tries to find less controversial consequences other than removal from office. He concludes there was no other way to remove federal judges other than impeachment due to their "life tenure." However, Berger does not address the factors that may increase the likelihood of impeachment. Gerhardt (2000a and 2000b), on the other hand, gives much of his attention to judicial impeachments, and he argues that Members of Congress need to take into account the specific duties the federal judge is required to perform in his job, and how they relate to the accusations against the judge.

For example, if a federal judge lies under oath, it is most likely grounds for impeachment as the judge is required to administer oaths as part of his appointed duties.

Rehnquist (1992) focuses most of his research on the history of the Justice Samuel Chase impeachment case. However, scholars are most interested in his constitutional assessment of the case because it was one of the earlier impeachments in our history. He argues there was no merit to the charge of abuse of political power against Justice Chase. In other words, how Congress defines “High Crimes and Misdemeanors” is important because it sets a precedent for future impeachment cases. Turner (1949) also focuses on the charges against a judge, and concludes that, in the case of John Pickering, “misbehavior” was grounds for impeachment. These four works provide a foundation to build upon in the study of impeachment of federal judges to determine the reasons why the House of Representatives may or may not impeach a judge. From these studies, one can identify the different accusations against the government official and determine which factors may increase the likelihood of impeachment.

The research detailed above provides scholars with a general understanding of the impeachment process. These previous studies suggest that the “High Crimes and Misdemeanors” the federal judges are accused of committing provides insight as to whether or not he or she will be impeached. Additionally, this research suggests that the impeachment process is political in nature. This finding, in particular, has guided me in setting up a research question and design that looks at not only the particular charges against a federal judge, but also at the relevant external political factors at the time of the impeachment.

However, there exists no systematic, empirical study about the impeachment of federal judges. It is important to determine the circumstances that increase the chance of impeachment since not every impeachment inquiry leads to an impeachment by the entire House of

Representatives. Therefore, this study will fill in a number of gaps by addressing the circumstances under which federal judges are impeached.

This project expects to answer the important question: Under what circumstances will the House of Representatives impeach a federal judge? In order to answer this question, this study will examine all sixty-five impeachment inquiries against federal judges.

Research Question and Design

As mentioned earlier, since 1789 close to one hundred impeachment proceedings have been initiated in the House of Representatives. However, only seventeen cases have reached the Senate: Two of these cases involved a president, one a senator, one a Secretary of War, while thirteen involved federal judges.⁷ While so much research and analysis has been dedicated to the presidential impeachments, the more intriguing questions come with federal judges, especially since most impeachment cases have concerned them. Furthermore, the only way a federal judge can be removed from office is through impeachment, because judges are granted life tenure. Other appointed government officials can be removed by other means, because they are appointed for only one presidential term and serve at the pleasure of the president.

Using a quantitative research design, I will systematically assess a number of factors across every federal judicial impeachment inquiry in order to draw conclusions about the conditions under which federal judges have been impeached. I will test my hypotheses and draw conclusions from the results in order to determine if any of these factors played a role in why federal judges are impeached. In order to examine these factors for each of the impeachment

⁷ Some scholars state that twelve federal judges have been impeached in total (Stelle 1999). One judge, Mark H. Delahay, was the first government official to avoid an impeachment trial by resigning beforehand. If a researcher defines impeachment as being the entire process, including the trial, then Delahay is not included. For this thesis, Delahay will be included, because the impeachment process is defined as just the proceedings in the House of Representatives.

inquiries, I will use *The Congressional Record* and its predecessors, *The Supreme Court Compendium*, *United States Statutes at-Large*, and *Congressional Quarterly* to gather the necessary data.

The dataset used to test the hypotheses for this study will concern the sixty-five impeachment inquiries against federal judges voted on by the entire House of Representatives over the past two hundred years in order to systematically determine what conditions must be in place for members of the House of Representatives to vote to impeach.⁸ The dependent variable for this study is the outcomes of the impeachment inquiries. Since most scholars focus on the thirteen impeached federal judiciary members, it is important to examine the cases of the other fifty-two judges who were not impeached.

Hypotheses

The hypotheses listed below test the circumstances under which the House of Representatives will vote to impeach members of the judiciary.

Tension between the Courts and Congress (Court Curbing)

Court-curbing, in general, is a way the legislative branch keeps the judiciary in line. One can argue that impeachment reflects possible tension between the courts and Congress. Therefore, impeachment can be a means of court-curbing, because the House of Representatives can use its power to impeach judges as a way to keep the courts in check. Besides impeachment, there are other types of court-curbing. For example, scholars who have looked at court-curbing (Nagel 1965; Stumpf 1972; Adamany 1983) discuss the major events that have sparked Congress to try and pass laws to rein in the federal courts. Harry Stumpf (1972) defines “court-curbing” as “any congressional bill having as its purpose...an alteration in the structure or function of the

⁸ Included in the dataset are the thirteen federal judiciary members who were impeached by the House of Representatives.

Supreme Court as an institution...” (Schmidhauser and Berg 1972: 145). Stuart Nagel (1969) examines the factors that seem to explain why Congress tried to curb the courts. He measures the number of court-curbing bills introduced in Congress during particular time periods and found there were particular eras when Congress has more successfully curbed the courts between 1789 and 1959 (Nagel 1969: 260). Adamany’s (1983) and Rosenberg’s (1992) studies follow up on post-1959 court-curbing, by relying on Nagel’s methodology. However, Nagel, Adamany, and Rosenberg all find there are only a handful of periods when court curbing took place. Therefore, I hypothesize there should be a high correlation between a court-curbing period and the likelihood of impeachment, especially because impeachment is another court-curbing tool.

Hypothesis 1: *The House of Representatives is more likely to impeach a federal judge during a successful court-curbing period.*

Using the court-curbing periods categorized by Nagel and Rosenberg, I will look at the different eras to determine if an impeachment occurred during one of those times.

Election Year

Whether it is an election year may impact the voting decision of a Member of Congress. The public can be an important part of a Member of Congress’ voting decision calculus, especially when he or she is up for reelection. Several scholars have documented the impact of electoral forces on congressional decisions (Mayhew 1974; Riselbach 1973; Fenno 1973; Sinclair 1983). Members of Congress are more careful in their decision-making during election years because their goal is to keep their seat. Furthermore, impeachment is a controversial and salient issue. Therefore, members of the House are more likely to vote for impeachment during an election year because the issue of impeachment is significant, and because constituents are likely to support their representative in voting for impeachment. The constituents are likely to

support their representative because they understand that it is good policy to vote against federal judges who act inappropriately, as it is a way to keep the judiciary in check.

Hypothesis 2: *The House of Representatives is more likely to impeach a federal judge during an election year.*

To test the above hypothesis, I will examine whether each impeachment occurred during an election year. I will also look closely at whether there is a difference in congressional behavior between midterm and presidential election years.

Party Differences between Congress and the President who appointed the judge

Members of the House of Representatives may take their political party into account before voting for impeachment. Presumably, Members of Congress will support a federal judge who was appointed by a president from their own political party and be more likely to impeach a judge from the opposite party. This hypothesis stems from the idea that ideological reflections are also important in federal judicial appointments. A recent study by Binder and Maltzman (2002) examines the implications of political party on senatorial delay in confirming federal judges. Looking specifically at appellate court nominations, the authors determine that during periods of divided government, the Senate is likely to use their powers to slow down the nomination process to prevent the president from appointing judges from the opposite party. Likewise, the majority party in the House may be more likely to impeach federal judges who were nominated by a president from the opposing party.

Hypothesis 3: *The majority party of the House of Representatives is more likely to impeach if the judge was nominated by a President from the opposing political party.*

In order to test the above hypothesis, I will determine the party of the nominating President of the federal judge and the majority party in the House at the time of the impeachment inquiry.

Crises

As we saw from other researchers (Benedict 1973; Berger 1973; Brant 1972; Melton 1998; Pious 1998), House members may take into account what is happening politically, socially, and economically when they vote on whether to impeach a federal judge. One relevant situation may be a time of national crisis. Nagel (1965) defines a crisis as “a period of depression, economic panic, war (including cold war), or post war readjustment” (935). While Nagel’s definition is helpful, it is too broad to apply to the twentieth century; Nagel’s definition encompasses almost every single year since 1919. For this study, a period of crisis will include periods of war or conflict in which the United States was involved,⁹ a period of significant economic decline such as a recession,¹⁰ and a post war readjustment period.¹¹ I hypothesize that Members of Congress may be more likely to support impeachment during a time of crisis, because as Nagel (1965) found in his study, a crisis was usually present during periods of successful court curbing. Therefore, since I hypothesized impeachment and court curbing will have a positive relationship, so will periods of crises.

Hypothesis 4: *Judges are more likely to be impeached by the House of Representatives during a time of crisis.*

Based on the revised definition of a crisis, I will examine each year an impeachment inquiry of a federal judiciary member occurred and determine if it took place during a crisis period.

“High Crimes and Misdemeanors”

Although many impeachment scholars discuss the interpretation of “high crimes and misdemeanors,” no one presents systematic, empirical data on this issue. In this study, the accusations against the federal judges will be divided into two categories. The first group

⁹ This includes the Civil War, World War I, World War II, Korean War, and Vietnam War.

¹⁰ A recession is a decline in the Gross Domestic Product (GDP) over two quarters.

¹¹ The period of five years after a war ends.

includes accusations that are considered criminal acts, such as income tax evasion and the solicitation of a bribe. The second set includes non-criminal acts, such as favoritism in the appointment of bankruptcy receivers, mental instability, and arbitrary and oppressive trial conduct. The prediction is that a federal judge who commits a criminal act will be more likely to be impeached.

Hypothesis 5: *When the federal judge is accused of committing a criminal act, the House of Representatives is more likely to impeach.*

I will look at the specific inquiries the House of Representatives made about each federal judge who was investigated and determine which accusations concerned criminal acts.

Length of Service (Tenure of Federal Judge)

Article III of the United States Constitution states that federal judges are appointed for life unless they do not exhibit “good behavior,” in which case they can be removed by impeachment proceedings in Congress. Judges are not accountable for their actions in the same manner as our elected representatives. While discussing how judges’ personal goals affect judicial behavior, Lawrence Baum (1994) argues that impeachment is a relevant thought if judges consider life tenure a goal. If federal judges have served a long time, they are more likely to have a record of “good behavior” and are less likely to be impeached.

Hypothesis 6: *The longer a federal judge has served, the less likely it is that the House of Representatives will impeach the federal judge.*

I will record the numbers of years of service for each of the federal judges who were investigated by Congress.

Findings and Analysis

Court Curbing

My first hypothesis proposes that the House of Representatives is more likely to impeach a federal judge during a court-curbing period, because court-curbing is a way to keep the judiciary in check. For this thesis, the classification of years comes directly from the court-curbing studies of Stuart Nagel (1965) and Gerald Rosenberg (1992). Nagel identifies several periods of intensified congressional activity against the Supreme Court, and he also differentiates between more and less successful periods of court-curbing. Examining 165 court-curbing bills introduced in Congress between 1789 and 1959, Nagel finds that the four most successful court-curbing periods in Congress occurred in the early 1800s, the late 1820s, the 1860s, and the mid-1930s. There were less significant periods of court-curbing activity in the mid-1890s, the early 1920s, and the mid-1950s. Rosenberg (1992) uses Nagel's classification scheme to classify two more periods of successful court-curbing: 1963-1965 and 1977-1982. Therefore, these two scholars provide a total of nine periods of successful court-curbing activity by the Congress.

I looked at the periods identified by Nagel and Rosenberg to see if there is a connection between impeachment and successful court-curbing periods. The results of my study are presented in Tables 2 and 3, and they are somewhat intriguing. Table 2 shows that more impeachment inquiries and impeachments actually occurred during years that were not designated as a successful court-curbing period. In fact, only 14 impeachment inquiries (22%) occurred during the six "high" periods of court-curbing. Furthermore, only three impeachment inquiries happened during the three "moderate" periods of court-curbing. Thus, only 17 impeachment inquiries (26%) occurred during what Nagel describes as a successful court-curbing period. However, when we compare the outcomes of impeachment inquiries during

court-curbing and non-court-curbing periods, we see a different result: In fact, the existence of a court-curbing period actually increases the likelihood of impeachment.

Table 3 lists the outcomes of inquiries during both court-curbing periods and non-court-curbing periods. During court-curbing periods, there were a total of 14 impeachment inquiries and four impeachments. Overall, 29% of all impeachment inquiries during a court-curbing period resulted in impeachment. Therefore, one could conclude that whether the impeachment proceeding takes place during a court-curbing period is not a factor which increases the likelihood of a judge being impeached. However, we must look at this finding in comparison to inquiries during non-court-curbing periods: During non-court-curbing periods, only 13% of impeachment inquiries resulted in impeachment. Thus, judges are more than twice as likely to be impeached during a court-curbing period.

Looking at the data presented in Table 2, we can analyze why certain periods of court-curbing increased the likelihood of impeachment. For example, between 1802 and 1804, a “high” period of court-curbing, three impeachment inquiries (5%) out of the entire 65 took place within those three years. Furthermore, two of the three inquiries resulted in impeachment, which means 15% of all impeachments occurred between 1802 and 1804. This was the highest percentage of impeachments during the court-curbing periods classified by both Nagel and Rosenberg.

During this period, the tension between Democratic-Republicans and Federalists was high. The battle between the two parties reached a climax when President John Adams appointed his so called “midnight judges,” including Justice of the Peace William Marbury. Marbury’s commission was signed and sealed, but never delivered.¹² The Democratic-Republicans, angered by the actions of the Federalists, passed legislation preventing the Supreme

¹² This resulted in the Supreme Court case *Marbury v. Madison* (1803).

Court from meeting for well over a year and abolished the newly established circuit court system. Thus, this was a time of extreme tension between the political parties in the different branches of government.

Nagel's and Rosenberg's studies measure the number of court-curbing bills introduced in Congress to determine the nine periods of court-curbing. While they did not include impeachment as part of their study, it can be an example of court-curbing. Generally speaking, court-curbing is one way Members of Congress keep the federal judiciary in line and use their power of oversight. In addition to impeachment, if Members of Congress would like to attack the courts, they can propose constitutional amendments, or a Senator can block a presidential nomination from the bench (Nagel 1965). Ultimately, I find federal judges are more likely to be impeached during a court-curbing period because impeachment is a way to keep the judiciary in check.

Table 2
Congressional Court-Curbing Periods

Years	Congressional Court-Curbing ¹³	Number of impeachment inquiries	% of impeachment inquiries (out of 65)	Number of impeachments	% of impeachments (out of 13)
1789-1801-	None	1	2	1	8
1802-1804	High	3	5	1	8
1805-1822	None	7	12	0	0
1823-1831	High	4	6	1	8
1832-1857	None	3	5	0	0
1858-1869	High	2	3	1	8
1870-1892	None	9	14	1	8
1893-1897	Moderate	2	3	0	0
1898-1921	None	8	12	2	15
1922-1924-	Moderate	1	2	0	0
1925-1934	None	9	14	2	15
1935-1937	High	4	6	1	8
1938-1954	None	4	6	0	0
1955-1959	Moderate	0	0	0	0
1960-1962	None	0	0	0	0
1963-1965	High	0	0	0	0
1966-1975	None	4	6	0	0
1977-1982	High	1	2	0	0
1982-1984	None	0	0	0	0
Total		62 ¹⁵		10	

¹³This classification scheme is derived from Stuart Nagel (1965). “High” represents successful periods of intensified court-curbing, “moderate” represents slightly less successful periods of intensified court-curbing, and “none” represents the unsuccessful periods of court-curbing. Nagel uses three criteria to determine success. The first is the number of anti-Court bills reported from committee during each period. The second is the percentage of the bills presented out of the committee. The third criterion is determining whether a congressional attack has changed the voting behavior of the Court on the issues that at first motivated the attack. For the years after 1963, I used Gerald N. Rosenberg’s (1992) classification of high frequency periods of court attacks. Rosenberg used Nagel’s methodology to examine these years.

Since Rosenberg’s research only covers through 1984, it is important to note that this table does not include the three impeachment inquiries which occurred after that date; strikingly all three inquiries resulted in impeachment.

¹⁵ Since Rosenberg’s research only covers through 1984, it is important to note that this table does not include the three impeachment inquiries which occurred after that date; strikingly all three inquiries resulted in impeachment.

Table 3
Comparison of Outcomes during Court-Curbing Periods and Non-Court-Curbing Periods

	Number of Impeachment Inquiries	Number of Impeachments	% of Impeachments (out of Total Number of Impeachment Inquiries)
Court-Curbing Period	14	4	29
Non-Court-Curbing Period	48	6	13

Election Year

My second hypothesis is that the House of Representatives is more likely to impeach a federal judge during an election year. Impeachment of judges is a salient issue, and it becomes an even more important issue since Members of the House are motivated to protect their own positions in the legislature when impeachments occur during an election year. More importantly for this analysis, Representatives' roll call behavior is influenced by their own policy preferences and by their own awareness of their constituents' views (Mayhew 1974; Miller and Stokes 1963).

The results for this analysis are divided into four tables. Tables 4 and 5 present the findings of the impeachment inquiries and impeachments that occurred during elections years. Tables 6 and 7 separate out presidential election years to determine if there is a difference in congressional behavior during mid-term and presidential election years. The results shown in all of these tables are interesting.

For instance, as shown in Table 4, over half (53%) of the impeachment inquiries occurred during election years, indicating that there is some correlation between impeachment and election year. Furthermore, of the 13 times the House voted to impeach a federal judge over

the past two hundred years, eight of them occurred during an election year. In general, these results indicate that impeachments are just slightly more likely to take place in an election year.

Table 5 lists the outcomes of impeachments during mid-term election years and non-mid-term election years. There were a total of 34 impeachment inquiries that occurred during elections years and of the 34 inquiries, eight resulted in impeachment. Thus, 24% of all impeachment inquiries of federal judges which took place during a mid-term election year resulted in impeachment. This percentage was higher than for impeachment inquiries which took place during non-mid-term election years. During these years, 31 impeachment inquiries occurred and five resulted in impeachment. Therefore, 16% of the impeachment inquiries during non-mid-term-election years resulted in impeachment. In the end, there is a higher likelihood of impeachment mid-term election years in comparison to non-mid-term election years.

An intriguing question emerges as a result of these findings: Why did a higher percentage of the impeachment inquiries and impeachments happen during mid-term election years? For example, between 1796 and 1819, the very beginning of our Republic, seven out of 10 impeachment inquiries transpired during mid-term election years, one of which resulted in impeachment. The reason for this high percentage is understandable since we were in a new stage in government. The first years of our Republic were referred to as the “experiment” because government officials and the public did not know if this new system of government under the Constitution was going to work (Rhodehamel 1998). Furthermore, Members of Congress were more likely to strictly interpret the Constitution and interpret it word for word, because the document was so new. In addition, this was a time period of more oversight of Congress with the decision of *Marbury v. Madison* (1803) and ultimately the establishment of judicial review. After this Supreme Court decision, the power of determining if a law was

constitutional was given to the Supreme Court, giving the Court the final say in legislative matters. Since the Supreme Court is part of the federal judiciary, this decision affected all federal courts.

During the late 1800s and early 1900s, there were seven impeachment inquiries (11%) during mid-term election years. From the mid-twentieth century to 1999, there were an increased number of impeachment inquiries during mid-term elections years. While the increased number of inquiries during the 1940s and 1980s can be explained by periods of crisis and periods of intensified court-curbing, the 1960s and 1970s are especially interesting. Even though there were only five inquiries, *all* impeachment inquiries during this era took place during mid-term election years.

Table 4
Mid-Term Election Years

Years	Number of impeachment inquiries during an election year	% of impeachment inquiries (out of 65) occurring during an election year	Total Number of impeachment inquiries	Number of impeachments during an election year	% of impeachments (out of 13) occurring during an election year	Total Number of Impeachments
1796-1819	7	11	10	1	8	2
1820-1839	3	5	7	1	8	1
1840-1859	0	0	2	0	0	0
1860-1879	4	6	9	1	8	2
1880-1899	2	3	3	0	0	0
1900-1919	5	8	7	1	8	2
1920-1939	4	6	16	2	15	3
1940-1959	2	3	3	0	0	0
1960-1979	5	8	5	0	0	0
1980-1999	2	3	3	2	15	3
Total	34	53	65	8	62	13

Table 5
Comparison of Outcomes during Mid-Term Election Years to Non-Mid-Term Election Years

	Number of Impeachment Inquiries	Number of Impeachments	% of Impeachments(out of Total Number of Impeachment Inquiries)
Mid-Term Election Years	34	8	24
Non-Mid-Term Election Years	31	5	16

Table 6 reports the frequency of both impeachment inquiries and impeachments during presidential election years. Unlike mid-term elections, there is not a high correlation between the number of inquiries and presidential election years. A very small number of impeachment inquiries took place during presidential election years: only 10 impeachment inquiries (15%) between 1796 and 1999 occurred during presidential election years, and only three (23%) resulted in an impeachment. In fact, the eras where there are a higher number of impeachment inquiries during presidential elections are also time periods that have a higher number of impeachment investigations during mid-term elections. These include 1796-1819 and 1900-1919.

However, once again, there is an association between the likelihood of an inquiry leading to impeachment and presidential election years. Table 7 compares the impeachment outcomes during presidential years to non-presidential years. Similar to mid-term election years, there is a slightly higher likelihood that a federal judge investigated during an election year would be impeached. There were 10 impeachment inquiries during presidential election years, three of which resulted in impeachment during presidential election years. This means that 30% of the impeachment inquiries resulted in impeachments. On the other hand, there were 55 inquiries

during non-presidential election years, and 10 of these resulted in impeachment. In other words, 18% of all impeachment inquiries conducted during a non-presidential election year resulted in impeachments. Thus, impeachments were almost twice as likely to occur during presidential election years.

In sum, 52% of all impeachment inquiries and 67% of all impeachments took place during an election year. And, more importantly, 24% of impeachment inquiries brought during election years resulted in the federal judge being impeached. These results support my original hypothesis that the House of Representatives is more likely to vote for impeachment during an election year. While it is difficult to determine if impeachment decisions by House members were motivated by their own personal policy or their constituents' views from this data, Miller and Stokes (1962) interviewed Members of Congress and determined that their personal conduct was more important to their reelection than their voting records. In fact, only 46% gave ratings of "very important" to national issues on their reelection bids.

Finally, there is clearly not much of a difference in the House of Representatives' behavior between mid-term and presidential election years. The likelihood of impeachment during mid-term election years and presidential election years is about the same. However, the likelihood of impeachment is higher than non-mid-term election years and presidential election years.

Table 6
Presidential Election Year

Years	Number of impeachment inquiries during a presidential election year	% of impeachment inquiries (out of 65) occurring during a presidential election year	Total Number of impeachment inquiries	Number of impeachments during a presidential election year	% of impeachments (out of 13) occurring during a presidential election year	Total Number of Impeachments
1796-1819	4	6	10	1	8	2
1820-1839	0	0	7	0	0	1
1840-1859	0	0	2	0	0	0
1860-1879	0	0	9	0	0	2
1880-1899	0	0	3	0	0	0
1900-1919	3	5	7	0	0	2
1920-1939	2	3	16	1	8	3
1940-1959	0	0	3	0	0	0
1960-1979	0	0	5	0	0	0
1980-1999	1	2	3	1	8	3
Total	10	16	65	3	24	13

Table 7
Comparison of Outcomes During Presidential Election Years and Non-Presidential Election Years

	Number of Impeachment Inquiries	Number of Impeachments	% of Impeachments(out of Total Number of Impeachment Inquiries)
Presidential Election Years	10	3	30
Non-Presidential Election Years	55	10	18

Party Differences

I theorized that the House of Representatives is more likely to impeach a federal judge if the judge was nominated by a President from the opposing party of the majority party in the House. In other words, the majority party in the House of Representatives is more likely to support a federal judge who was appointed by a president from their own political party and more likely to impeach a judge from the opposing party. This hypothesis stems from the idea that partisanship is also important in federal judicial appointments (see e.g. Binder & Maltzmann 2002).

Table 9 lists the outcomes of impeachments when the party of the nominating president was different from the majority party in the House and when there were not party differences. During times when there were partisanship differences, there were 32 impeachment inquiries and eight of these resulted in impeachment. This means that 25% of the impeachment inquiries resulted in impeachment during times when there were party differences. On the other hand, when the political party of the nominating president and the majority party in the House were the same, there were 33 impeachment inquiries and five resulted in impeachment. Therefore, 15% of the impeachment inquiries resulted in impeachment when there were no party differences. Thus, Table 9 presents data that suggests there is a higher likelihood of impeachments during times when there are party differences compared to times when there are no party differences.

Overall, 32 out of 65 impeachment inquiries (49%) took place when the nominating president was from the opposing political party of the majority of the House. Of the 32 inquiries, eight resulted in impeachment. More specifically, 61% of all impeachments took place during times when partisanship likely played a role. Members of Congress, then, are more likely to

investigate a federal judge and more likely to impeach the judge if the nominating president is from the opposite party of the current majority party in Congress.

Throughout the first two decades of our country, there were a total of 10 impeachment inquiries. Six of those impeachment inquiries were during a time when the nominating president was from the opposite political party of the House majority. Of those six cases, two (33%) resulted in an impeachment. This tells us that when there are party differences between the nominating president and the current majority party in Congress, there is a higher probability of impeachment.

During the next twenty years, there were seven total impeachment inquiries. Three of the investigations were during times when the nominating president was from the opposite political party, and one of these resulted in impeachment by the House of Representatives. Again, this indicates a direct relationship between impeachment and partisanship, because impeachment inquiries have occurred more frequently when the judge from the nominating president is from the opposite party of the present majority party in Congress.

Interestingly, there were only two impeachment inquiries between 1840 and 1859. During both of these investigations, the majority party in Congress was the same as the nominating president. Thus, the House majority is less likely to impeach judges of the same party.

On the other hand, the next era brought about an increase in the number of impeachment inquiries. There were a total of nine investigations by the House Judiciary Committee and five of these took place during years when there were party differences between the nominating president and Congress. However, only one of these resulted in an impeachment. This result

may be due to the fact, as I will show later, that the United States was involved in the Civil War and Reconstruction, and Members of the House are less likely to impeach during a time of crisis.

From 1880 to 1899, there were only three impeachment inquiries and during the investigations, there were no party differences. However, over the next forty years, there was a major increase in impeachment inquiries. From 1900 to 1919, there were seven investigations, five of which occurred during years when the nominating president of the federal judge was from the opposing party that controlled Congress, and one of these judges was impeached.

Throughout the next twenty years, the House Judiciary Committee investigated 16 federal judges, 10 of which took place when there were party differences. Three of the 16 inquiries led to impeachment and all three were during years when there were party differences. These forty years demonstrate that there increased likelihood of impeachment inquiries and impeachments when there are party differences between the nominating president and Congress.

During the 1940s and 1950s, there were only three impeachment inquiries, all of which took place when there were party differences. But none of these resulted in an impeachment. The reason the investigations did not lead to an impeachment was that “High Crimes and Misdemeanors” that the federal judges were accused of were nothing more than disorderly conduct. The House Judiciary Committee would have been hard pressed to convince the entire House of Representatives to impeach the three federal judges, despite the fact that there may have been partisan differences.

While there were a total of eight impeachment inquiries (12%) during the last forty years of the twentieth century, none were during a time when there were party differences. Again, the lower percentage of impeachment inquiries compared to the times when there were party differences and the fact that no impeachments occurred supports my hypothesis that

impeachments and inquiries are more likely to happen when the nominating president is from the opposing political party.

Moreover, all of these impeachment inquiries over the last forty years took place when the Democrats held the majority in Congress. An intriguing question emerges from these data: Are impeachments more likely to occur when the party that controls Congress is Democrat or Republican? The answer is that six of the 13 impeachments occurred when Congress was controlled by Democrats, three occurred when Republicans, and four occurred when control was divided Democratic-Republican.¹⁶ In the end, more impeachments occurred when the majority party in Congress was Democrat.

Party differences between the nominating president of the federal judge and the majority of the Members of the House increase the possibility of impeachment inquiries and impeachments. Although there are few studies on the removal of federal judges, scholars have researched partisan issues in relation to confirming federal judges (Segal 1997). In Segal's study, he found that Supreme Court Justice nominees were more likely to be approved by the Senate when the President's party had control of the Senate. Similarly, my study demonstrates a clear relationship between party differences and probability of inquiries and impeachments.

The data show that the removal of federal judges, like the confirmation of federal judges, relates to partisanship. Half of the impeachment inquiries (32) took place when the nominating president was from the opposing political party, and eight (25%) led to impeachment. During times when there were no party differences, 33 impeachment inquiries took place, and 5 (15%) resulted in impeachment. Thus, the likelihood of impeachment is higher during times when there were party differences compared to times when there were no party differences.

¹⁶ Democratic-Republicans were the opposing party to the Federalists in the early 1800s.

Table 8
Partisanship

Years	Number of impeachment inquiries when nominating president is from opposing political party of majority of House	% of impeachment inquiries (out of 65)	Total Number of Impeachment Inquiries	Number of impeachments when nominating president is from the opposing political party	% of impeachments (out of 13)	Total Number of Impeachments
1796-1819	6	9	10	2	15	2
1820-1839	3	5	7	1	8	1
1840-1859	0	0	2	0	0	0
1860-1879	5	8	9	1	8	2
1880-1899	0	0	3	0	0	0
1900-1919	5	8	7	1	8	2
1920-1939	10	15	16	3	23	3
1940-1959	3	5	3	0	0	0
1960-1979	0	0	5	0	0	0
1980-1999	0	0	3	0	0	3
Total	32	49	65	8	62	13

Table 9

Comparison of Impeachment Outcomes During Periods when there were Party Differences to times when there were not Party Differences

	Number of Impeachment Inquiries	Number of Impeachments	% of Impeachments(out of Total Number of Impeachment Inquiries)
Party Differences	32	8	25
No Party Differences	33	5	15

Crises

War

Studies show that the House of Representatives takes into account what is happening politically, socially, and economically at the time of the impeachment inquiry (Nagel 1965; Rosenberg 1992). My fourth hypothesis suggested that a vote for impeachment by the House of Representatives is more likely to take place during a time of crisis. A crisis includes periods of war or conflict in which the United States was involved,¹⁷ a period of significant economic decline,¹⁸ and post-war readjustment periods.¹⁹ Thus, the findings are divided into four separate tables: war, post-war, economy, and a comparison of the outcomes of all three crises periods.

Table 10 displays eight different times when the United States was involved in a war²⁰ and nine non-war periods. Overall, there were six impeachment inquiries during a time of war, and one impeachment. However, when the United States was not involved in a war, 59 out of the 65 impeachment inquiries (91%) took place and 12 of the 13 impeachments occurred (92%). More importantly, Table 13 compares the likelihood of impeachment between war and non-war periods. During periods of war, there were six impeachment inquiries, with one (17%) resulting in impeachment. On the other hand, there were 59 impeachment inquiries during non-war periods and 12 (20%) resulted in impeachment. Therefore, there is a slightly better chance of an impeachment occurring during a non-war period.

Before the mid-nineteenth century, there were two major wars: the War of 1812 and the Mexican-American War. During the period of these two events, no impeachment inquiries or

¹⁷ This includes the Civil War, World War I, World War II, Korean War, and Vietnam War.

¹⁸ This refers to periods of recession which is a decline in the Gross Domestic Product (GDP) over two quarters.

¹⁹ The period of five years after a war ends.

²⁰ While there are numerous other periods in history in which the United States was involved in a conflict, those times would encompass almost every other year. Examples of these conflicts include "Bleeding Kansas," Cuban Missile Crisis, and Iran Contra Affair.

impeachments took place. While this finding was a bit surprising, there are reasons for the lack of impeachment inquiries and impeachments during this time frame.

For instance, few impeachment inquiries took place before 1812. Only six of the 65 total impeachment inquiries occurred before 1812. It is not surprising that in the span of the seven years during the two wars, no impeachment inquiries took place, since the data are showing that more impeachments took place during non-war periods.

Comparatively, during the Civil War one impeachment inquiry took place and resulted in an impeachment. West H. Humphreys, who sat on the bench for the U.S. District Court in Tennessee, was impeached on charges for refusing to hold court and waging war against the U.S. government. The impeachment of Humphreys is not surprising since the Union was at war with the Confederacy, and Tennessee was part of the Confederate states.

No impeachment inquiries took place during the Spanish American War or World War I compared to the 34 inquiries that took place during the non-war periods before and after these two wars. This is only a span of three years and these wars did not impact impeachment. However, during the non-war periods between 1866 and 1897 and 1899 and 1916 before the Spanish American war, 11 impeachment inquiries occurred, and seven impeachment inquiries occurred after this war. A total of three judges were impeached in the non-war periods before and after the Spanish American War. Furthermore, during the non-war period after World War I, 16 impeachment inquiries occurred, three of which resulted in impeachment. Clearly, Members of the House were more concerned about what was happening in relation to the wars and were not concerned about the behavior of federal judges.

The time period covering the Vietnam War, which spans the most number of years of all the conflicts, is where we see the most impeachment inquiries. The three impeachment inquiries

all took place during 1966, the beginning stages of the conflict where troops were being sent to Vietnam. The later stages of the conflict drew the most controversy from all branches of government and the general public, which may explain why there were fewer impeachment inquiries then, because, as previously mentioned, party differences may increase the likelihood of inquiries and impeachments. During this time, there were many issues where the parties were divided.

Ultimately, war or conflict in which the United States involved is not positively associated with impeachments. Only six impeachment inquiries took place during wartime, compared with the 59 that took place during non-war periods. Furthermore, only one impeachment occurred during the eight-war periods, leaving the other 12 impeachments to take place during non-war time. In general, these results show that Members of Congress are more concerned about the current crisis. And, since Congress has the sole power to declare war, their focus should be on the current conflict at hand. However, Members of the House may delay or table the investigation of federal judges until the end of the war; therefore, the post-war readjustment periods should show an increase in impeachment inquiries.

Table 10
War

Years	War Period? (War/Conflict)	Number of impeachment inquiries	% of impeachment inquiries (out of 65)	Number of impeachments	% of impeachments (out of 13)
1796-	No	6	9	2	15

1811					
1812-1815	Yes (War of 1812)	0	0	0	0
1816-1845	No	11	17	1	8
1846-1848	Yes (Mexican-American War)	0	0	0	0
1849-1860	No	2	3	0	0
1861-1865	Yes (Civil War)	1	2	1	8
1866-1897	No	11	17	1	8
1898	Yes (Spanish-American War)	0	0	0	0
1899-1916	No	7	11	2	15
1917-1918	Yes (American Involvement World War I) ²²	0	0	0	0
1919-1940	No	16	25	3	23
1941-1945	Yes (World War II)	1	2	0	0
1946-1949	No	2	3	0	0
1950-1953	Yes (Korean War)	0	0	0	0
1954-1964	No	0	0	0	0
1965-1973	Yes (American Involvement Vietnam War)	4	6	0	0
1974-1989	No	4	6	3	23
Total during War Period		6	9	1	8
Total during Non-war Period		59	91	12	92

Post-War Readjustment

Table 11 illustrates the correlation between the frequency of impeachment inquiries and post-war readjustment periods. As predicted, the number of impeachment inquiries did go up

²² There were two impeachment inquiries in 1914 at the start of World War I, but the beginning years were not included in these data as the United States had a policy of neutrality and was not involved in the conflict until 1917

after the wars ended, but only slightly. There were a total of 10 impeachment inquiries (15%) during the post-war periods, which is a small increase from the six impeachment inquiries (9%) that took place during a time of war. Furthermore, no judges were impeached during post-war periods. On the other hand, all 13 impeachments occurred during non-post-war periods, and 55 of the 65 impeachments took place during those periods. Thus, even though there was a minor increase in the number of impeachment inquiries during post-war periods, the data still suggest that impeachment inquiries and impeachments are more likely to occur when there is not a crisis. Furthermore, when comparing the outcome of impeachments between post-war readjustment periods and non-post-war readjustment periods, there is a much higher likelihood of impeachment during non-post-war-readjustment periods. There were 10 inquiries during post-war periods, with zero (0%) resulting in impeachment. However, during non-post-war readjustment periods, there were 55 impeachment inquiries, in which 13 (24%) resulted in impeachment. Therefore, there is a much higher likelihood of an inquiry resulting in impeachment during a non-post-war readjustment period.

After the War of 1812, there were four impeachment inquiries during the post-war readjustment period. None of the four inquiries resulted in impeachments, which can partially be explained by the fact that three of the four federal judges had served on the bench for more than fifteen years. As I will show later, in general, judges are less likely to be impeached the longer they serve. Furthermore, it was a time of few congressional court-curbing attempts. (See Hypothesis One)

There was one impeachment inquiry during the post-war readjustment period after the Mexican-American War. However, the inquiry did not result in an impeachment. Unlike the first two conflicts, there were no impeachment inquiries during the post-war readjustment

periods after both the Civil War and the Spanish-American War. The Reconstruction Era after the Civil War required the complete focus of Members of Congress. Furthermore, the impeachment of Andrew Johnson took place during this era and was the center of attention.

During both post-war readjustment periods after World War I and World War II, two impeachment inquiries occurred compared to in the non-post-war period before and after the above readjustment times. The period after World War I was a time of moderate congressional court-curbing attempts. Also, the two federal judges that were investigated were appointed by a president of the same political party as the majority party in the House, which means that the federal judge was less likely to be impeached.

On the other hand, the period after World War II was a time of little or no court-curbing attempts. The two federal judges investigated were appointed by a president of the opposing political party in the House. Therefore, these two factors are consistent in determining why there is a slight increase in impeachment inquiries. However, the two impeachment inquiries after World War II ended were in the first year of the post-war readjustment period. There is documentation in the *Congressional Record* that permission was given to the House Judiciary Committee in 1945 to begin investigating the federal judges, but the Members of the House held off until 1946. The end of a war is a challenging time for a country, and the focus is on rebuilding and other items such as impeachment must wait.

During the non-post-war periods before and after World War I and World War II, there were 22 out of 65 impeachment inquiries (34%) and five out of 13 impeachments (38%). This is significantly higher than the post-war readjustment periods after World War I and World War II. While the periods after the World Wars had some inquiries, the era after the Korean War had no impeachment inquiries. However, the period after the Vietnam War had one inquiry. The post-

war readjustment period after the Vietnam War was a trying time for government and civilians. While the Vietnam War was going on and after, there were extreme degrees of domestic conflict (Lau, Brown, and Sears 1978).

In sum, there was a slight increase in impeachment inquiries during the post-war eras. There were six impeachment inquiries during wars and 10 impeachment inquiries during the post-war readjustment periods. It is also important to note that only one impeachment occurred during periods of war and no impeachments took place during the post-war readjustment periods. The small increase found here is due to the fact that the war has ended and Congress can now deal with other matters such as impeachment. During wars, there were few impeachment inquiries and impeachments. After the war ended and the country goes through the readjustment period, we see a slight increase in impeachment inquiries. However, the chance of an impeachment inquiry resulting in an impeachment is much higher during a non-post-war period than a post-war period.

While military conflict is clearly a crisis, it is also important to look at the economic recessions and their impact on the frequency of impeachment inquiries and impeachments.

Table 11
Post-War Readjustment Periods

Years	Post-War Period? (War/Conflict before post war period begins)	Number of Impeachment Inquiries	% of Impeachment Inquiries (out of 65)	Number of Impeachments	% of Impeachments (out of 13)
1796-	No	6	9	2	15

1815					
1816-1820	Yes (War of 1812)	4	6	0	0
1821-1848	No	7	11	1	8
1849-1853	Yes (Mexican-American War)	1	2	0	0
1854-1865	No	2	3	1	8
1866-1870	Yes (Civil War)	0	0	0	0
1871-1898	No	11	17	1	8
1899-1904	Yes (Spanish-American War)	0	0	0	0
1905-1918	No	7	11	2	15
1919-1924	Yes (American Involvement World War I)	2	3	0	0
1925-1945	No	15	23	3	23
1946-1951	Yes (World War II)	2	3	0	0
1952-1953	No	0	0	0	0
1954-1959	Yes (Korean War)	0	0	0	0
1960-1973	No	4	6	0	0
1974-1979	Yes (American Involvement Vietnam War)	1	2	0	0
1980-1989	No	3	5	3	23
Total during Post-War Period		10	15	0	0
Total during Non Post-war Period		55	85	13	100

Economic Recession

Overall, there were more impeachment inquiries and impeachments during times of economic recession compared to wartime and post-war readjustment periods. Ultimately, 27

impeachment inquiries out of 65 (42%) took place during an economic crisis and five of these inquiries resulted in impeachment. Furthermore, this means that 27% of the total number of inquiries during a recession resulted in impeachment. During the years when the country was economically sound, there were 38 impeachment inquiries out of 65 (58%), and eight resulted in impeachment. Therefore, 21% of impeachment inquiries during a non-recession period resulted in impeachment. While there was an increase in the number of impeachment inquiries during periods of economic recession versus war or post-war periods, when compared to times when the country is economically sound, impeachment is not more likely to occur. In fact, the outcome for impeachment for both recession and non-recession periods is about equal. Again, the results demonstrate that impeachment inquiries and impeachments are more likely to occur when the country is not in a period of crisis.

There were a total of seven investigations between 1873 and 1879. This is the most impeachment inquiries during an economic recession. Since most recessions happen over a span of two years before the country is able to recover, seven years is a longer time period. Therefore, the longer time frame makes it more probable that an impeachment investigation and/or impeachment may occur. However, in the non-recession periods that followed during 1880 and 1881, 1886, and 1889, no inquiries or impeachments occurred.

While there were two recession periods that followed, there were no impeachment inquiries during those times. The next recession where an impeachment inquiry happened is 1890. During the 1890s, there were four economic recessions. One inquiry took place during three of the four periods, and none of these resulted in an impeachment. There were no impeachment inquiries around the turn of the century but, five occurred during the early 1900s. Four of the five impeachments during this recession were also during an election year, which

increases the probability of impeachment. There was only one non-recession period in the 1890s, and no inquiries or impeachments occurred.

In 1910, a recession began and lasted until 1914. Over these five years, there were five impeachment inquiries and one impeachment. At this time, there were no other crises and it was not a time of intense court-curbing. The five impeachment inquiries also took place during years when the majority party in Congress was different than the party of the nominating president.

Between 1929 and 1933, six impeachment inquiries occurred. Of all the recessions, this was the most severe and resulted in the Great Depression. There was much animosity between the different branches of government over the solutions to this economic disaster. Furthermore, this was a time when very little court-curbing attempts through legislation took place. That being said, impeachment is another means to check the federal judicial branch and using this power was a way for Members of the House to oversee the courts.

In sum, there was an increase in impeachment inquiries during economic recessions as compared to war and post-war periods. However, it is important to note that it was not a significant enough (42%) increase to conclude that impeachment investigations were more likely to occur during an economic recession. The results are different than my original suggestion and fewer impeachment inquiries occur during this time of crisis. During times when the economy was sound, 38 out of 65 (58%) impeachment inquiries occurred, and 8 out of 13 impeachments (62%) occurred. Furthermore, out of the 27 impeachment inquiries occurring during a recession, five (19%) resulted in impeachment. And, out of the 38 impeachment inquiries occurring during a non-recession period, 8 (21%) resulted in impeachment. These numbers are faintly higher than recession periods. Therefore, an economic crisis does not

necessarily increase the likelihood of impeachments. In fact, there is almost an equal chance of impeachment occurring during periods of recession and non-recession.

After looking at three different types of crises separately, one can construe that periods of war, post-war readjustment periods, and periods of economic recession do not increase the probability of impeachment inquiries or impeachments. Furthermore, Table 13 combines the war, post-war, and recession periods to see whether the existence of any type of crises increases the likelihood that an investigation against a federal judge will result in impeachment. As Table 13 shows, we do not see an increased likelihood of impeachment. While there are slight increases in the numbers impeachment inquiries during post-war readjustment periods and economic recessions, it is not significant. During war periods, only 17% of all impeachment inquiries resulted in impeachment. Additionally, during post-war readjustment periods, there were zero impeachments. In recession periods, 19% of impeachment inquiries ended in impeachments. Again, compared with times when the country is not in crisis, a crisis period does not significantly impact the likelihood of impeachment. Ultimately, a crisis is a time that Members of Congress are concentrating on other matters and not focusing on removing federal judges from office.

Table 12 Economic Recession (table continued)

Years ²³	Economic Recession?	Number of impeachment inquiries	% of impeachment inquiries (out of 65)	Number of impeachments	% of impeachments (out of 13)
1796-1856	No	18	28	3	23
1857-1858	Yes	0	0	0	0
1859	No	1	2	0	0
1860-1861	Yes	0	0	0	0
1862-1864	No	1	2	1	8
1865-1867	Yes	0	0	0	0
1868	No	0	0	0	0
1869-1870	Yes	0	0	0	0
1871-1872	No	0	0	0	0
1873-1879	Yes	7	11	1	8
1880-1881	No	0	0	0	0
1882-1885	Yes	0	0	0	0
1886	No	0	0	0	0
1887-1888	Yes	0	0	0	0
1889	No	0	0	0	0
1890-1891	Yes	1	2	0	0
1892	No	0	0	0	0
1893-1894	Yes	1	2	0	0
1895-1897	Yes	1	2	0	0
1898	No	0	0	0	0
1899-1900	Yes	0	0	0	0
1901	No	0	0	0	0
1902-1904	Yes	0	0	0	0
1905-1906	No	1	2	1	8
1907-1908	Yes	1	2	0	0
1909	No	0	0	0	0
1910-1914	Yes	5	8	1	8
1915-1917	No	0	0	0	0
1918-1921	Yes	1	2	0	0
1922	No	0	0	0	0
1923-	Yes	0	0	0	0

²³ There is a lack of data in the years before 1857 of Gross Domestic Product. Therefore, I begin with 1857 as a starting point to identify the periods of recession in the United States.

1924					
1925	No	0	0	0	0
1926-1927	Yes	2	3	1	8
1928	No	0	0	0	0
1929-1933	Yes	6	9	1	8
1934-1936	No	5	8	1	8
1937-1938	Yes	1	2	0	0
1939-1944	No	1	2	0	0
1945	Yes	0	0	0	0
1946-1947	No	2	3	0	0
1948-1949	Yes	0	0	0	0
1950-1952	No	0	0	0	0
1953-1954	Yes	0	0	0	0
1955-1956	No	0	0	0	0
1957-1958	Yes	0	0	0	0
1959	No	0	0	0	0
1960-1961	Yes	0	0	0	0
1962-1968	No	3	5	0	0
1969-1970	Yes	0	0	0	0
1971-1972	No	0	0	0	0
1973-1975	Yes	0	0	0	0
1976-1979	No	1	2	0	0
1980-1982	Yes	0	0	0	0
1983-1989	No	3	5	3	23
Total During a Period of Economic Recession		27	42	5	38
Total During non-economic Crisis Period		38	58	8	62

Table 13 Comparison of Outcomes of all Crises and Non-Crises Periods

Crisis or Non-Crisis Period	Number of Impeachment Inquiries	% of Impeachment Inquiries (out of 65)	Number of Impeachments	% of Impeachments (out of 13)	% of Impeachments (out of total Number of Impeachment Inquiries)
War	6	9	1	8	17
Non-War	59	91	12	92	20
Post-War	10	15	0	0	0
Non-Post-War	55	85	13	100	24
Recession	27	42	5	38	19
Non-recession	38	58	8	62	21

“High Crimes and Misdemeanors”

Alexander Hamilton (1788) wrote about impeachments in *Federalist 65* and foresaw that political acts were indeed important in determining whether a government official would be impeached:

Impeachments will connect [themselves] with the pre-existing factions, and will enlist all their animosities, partialities, influence and interest on one side or another; and in such cases there will always be the greatest danger that the decision will be regulated more by the comparative strength of parties than by the real demonstrations of innocence or guilt.

In other words, the allegations may not be the most important factor in determining whether or not an impeachment is warranted. Rather, federal judges can be removed from office for political acts which Members of Congress consider “bad” enough to warrant an impeachment.

Article III, Section 1 of the Constitution states, “Judges, both of the Supreme and Inferior Courts, shall hold their Offices during good Behaviour.” One could infer from this clause that judges can only be removed for bad behavior. However, this view has never been adopted (Stelle 1999). Instead, Congress has consistently held that judges are civil officers who can be removed from office under the terms set out in Article II, Section 4. In other words, when

investigating impeachment accusations, federal judges are subject to the same set of laws as members of the Executive Branch.

The Constitution offers a brief definition of what constitutes an impeachable offense when it states that “all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other High Crimes and Misdemeanors.” This constitutional language offers little explanation of what exactly is an impeachable offense. The exceptions are treason and bribery which are specifically mentioned in the document. Therefore, the interpretation of “High Crimes and Misdemeanors” is left to the Members of Congress (Berger 1973; Bowman 1999; Brant 1972; Fields 1978; Gerhardt 2000; Melton 1998; Rehnquist 1992; Stelle 1999; Tribe 1999). The following data and analysis shed some light as to which particular actions or conduct have been considered important enough to cause the House of Representatives to begin an impeachment inquiry and ultimately to impeach a federal judge.

For the purpose of this study, I placed the allegations against the federal judges into two broad categories: criminal allegations and non-criminal allegations. More specifically, there were five categories of criminal allegations: bribery, illegal distribution of funds, waging war against the United States, income tax evasion, and perjury, and there were seven different types of non-criminal acts: misconduct, neglect of duty, intoxication on the bench, overstepping jurisdiction, mental instability, abuse of the contempt power, and favoritism in the appointment of bankruptcy receivers.

I hypothesized that when a federal judge is accused of committing a criminal act, rather than a non-criminal act, the House of Representatives is more likely to vote to impeach. Table 14 lists the criminal allegations brought against federal judges and Table 15 presents the non-

criminal allegations brought against federal judges. Most importantly, Table 16, compares the impeachment outcomes between criminal accusations against a federal judge and non-criminal accusations against a federal judge.

Interestingly, Table 14 shows that only 11 federal judges out of 65 (17%) were investigated because of a criminal allegation compared with the 54 out of 65 (83%) federal judges that were investigated for non-criminal acts. Six of the 13 impeachments (46%), however, were a result of a criminal act. Scholars have argued that Members of Congress have taken “High Crimes and Misdemeanors” to mean a federal crime defined by statutory law (Pious 1998). Theodore Dwight, explains “It is requisite that a crime should be committed as a basis for the accusation...There can be no impeachment except for a violation of a law of Congress or for the commission of a crime named in the Constitution” (1867: 10). Many scholars have argued that Congress takes this restrictive view.

The data here show that even with only six impeachments occurring due to a criminal act, the likelihood of a federal judge being impeached is higher than if a judge was accused of a non-criminal act. The data also show that most impeachment inquiries were for non-criminal allegations, but almost half of the impeachments concerned criminal allegations. Fifty-four of the 65 inquiries were for non-criminal allegations, demonstrating that other political acts are more likely to be investigated. Furthermore, of the 11 impeachment inquiries when a federal judge was accused of a criminal act, six (55%) resulted in an impeachment. And, of the 54 impeachment inquiries when a federal judge was accused of a non-criminal act, 7 (13%) resulted in an impeachment. Thus, there is a much higher likelihood of a federal judge being impeached if he or she is accused of a criminal act.

By looking at the specific criminal and non-criminal allegations, one can determine which non-criminal allegations are more likely to be considered severe enough to impeach a federal judge. For example, two impeachment inquiries occurred when bribery was an issue and one of these resulted in impeachment. The highest numbers of impeachment investigations (four) were for the illegal distribution of funds, and one of the judges was impeached. One judge was investigated for waging war against the United States government and one judge was investigated for income tax evasion, and both of these judges were impeached. Judge West H. Humphreys was accused of waging war against the United States for giving a pre-Civil War speech in which he, encouraged secession. The House of Representatives took very little time to impeach him, and the Senate convicted him in less than a day. Lastly, three impeachment inquiries occurred over the issue of perjury, and two resulted in impeachment. Thus, all of the above criminal allegations have led to at least one impeachment. The six federal judges who were impeached for criminal acts is slightly less than half of all judicial impeachments. Nevertheless, the likelihood of an impeachment by the House of Representatives is higher if a federal judge is accused of a criminal act.

While a noteworthy number of impeachments resulted when the allegations were criminal, it is important to examine the other 54 impeachment inquiries for non-criminal allegations against federal judges and how many of these led to impeachment.

Fifty-four of the 65 impeachment inquiries were non-criminal allegations compared to the 11 out of 65 criminal allegations. Of the 54 inquiries, eight resulted in impeachment. Looking at the types of allegations more specifically, 33 out of the 65 impeachment inquiries were brought to the attention of the House Judiciary Committee due to misconduct. However,

only one of these resulted in an impeachment. The reason is the difficulty of Members of Congress proving and defining misconduct as a “High Crime and Misdemeanor.”

The other types of allegations are also important to examine. For neglect of duty, two impeachment inquiries took place, and one resulted in impeachment. However, the one federal judge impeached for neglect of duty was also impeached for waging war against the United States, a criminal act. There were eight judges investigated for intoxication on the bench, two of which were impeached. It is clear that intoxication on the bench can be seen by some as a more serious offense because it can seriously impair a judge’s ability to do his job (Gerhardt 2000).

Only one judge was investigated for overstepping his jurisdiction, and he was not impeached. However, there were two federal judges investigated for mental instability, and one was impeached. The one judge who was impeached was also accused of intoxication on the bench. While both mental instability and intoxication on the bench are not criminal acts, House members felt the allegations were severe enough to warrant an impeachment because the actions were inappropriate enough to fall under “High Crimes and Misdemeanors.” Furthermore, these actions may interfere with a federal judge’s ability to perform his duties and may cause him to commit more serious acts (Gerhardt 2000).

There were four investigations for abuse of the contempt power, two of which resulted in impeachments. The abuse of the contempt power is inappropriate, because the federal judge who abuses that power is defying the authority of the court he was appointed to uphold. Both of these federal judges had no other allegations against them. Therefore, one can conclude that the House members consider this abuse ruthless enough to necessitate an impeachment.

The last allegation listed in the table is favoritism in the appointment of bankruptcy receivers. Four federal judges were accused of this, and two were impeached. The two federal

judges impeached were not accused of other criminal acts. Again, this is a severe enough allegation that the House members were willing to impeach. Thus, according to Members of the House, the following non-criminal allegations are severe enough to impeach a federal judge: neglect of duty, intoxication on the bench, mental instability, abuse of the contempt of power and favoritism in the appointment of bankruptcy receivers.

After examining the data of both criminal and non-criminal allegations, one can conclude that federal judges do not have to commit a crime in order to be investigated. However, Table 16 lists the impeachment outcomes of federal judge investigations. When a federal judge is accused of a criminal act, there is a higher likelihood that he or she would be impeached. There were 11 impeachment inquiries of federal judges that committed criminal acts, 6 of these resulted in impeachment. In other words, 55% of the impeachment inquiries of federal judges that were accused of criminal acts ended up in impeachment. Nevertheless, conduct need not be criminal to be impeachable. In fact, more federal judges have been investigated by the House Judiciary Committee for non-criminal offenses, rather than for criminal offenses. However, of the 54 impeachment inquiries of federal judges who were accused on non-criminal acts, only 7 resulted in impeachment. In other words, only 13% of these impeachment inquiries ended in an impeachment by the entire House. Thus, a federal judge who is accused of a criminal act is four times more likely to be impeached, and this clearly shows that while inquiries may be brought for more offenses, the House usually only impeaches judges when they have committed serious crimes.

Table 14
Criminal Allegations Against Federal Judges

Criminal Allegations ²⁴	Number of Impeachment Inquiries	% of Impeachment Inquiries (out of 65)	Number of Impeachments	% of Impeachments (out of 13)
Bribery	2	3	1	8
Illegal Distribution of Funds	4	6	1	8
Waging War Against the United States Government	1	2	1	8
Income Tax evasion	1	2	1	8
Perjury	3	5	2	15
Total	11	17	6	46

Table 15
Non-Criminal Allegations Against Federal Judges

Non-Criminal Allegations	Number of Impeachment Inquiries	% of Impeachment Inquiries (out of 65)	Number of Impeachments	% of Impeachments (out of 13)
Misconduct	33	43	0	0
Neglect of duty ²⁵	2	3	1	8
Intoxication on the Bench	8	12	2	15
Overstepping Jurisdiction	1	2	0	0
Mental Instability	2	3	1	8
Abuse of the contempt power	4	6	2	15
Favoritism in the appointment of bankruptcy receivers	4	6	2	15
Total	54	83	8	62

²⁴ While most federal judges had only one allegation against them, there were some judges that were accused of not only criminal acts, but also non-criminal acts.

²⁵ Neglect of duty includes such allegations as refusing to hold court.

Table 16
*Comparison of Impeachment Outcomes when the Federal Judge is Accused of a Criminal Act
 Versus a Non-Criminal Act*

	Number of Impeachment Inquiries	Number of Impeachments	% of Impeachments (out of Total Number of Impeachment Inquiries)
Criminal	11	6	55
Non-Criminal	54	7	13

Length of Service

The Framers tried to preserve judges' independence by giving them lifetime tenure. Article III, Section 1, states "The judges...shall hold their Offices during good Behaviour..." and, to ensure that their salaries could not be reduced out of vengeance for an unpopular decision, the clause continues, "The judges...shall...receive...a Compensation which shall not be diminished during their Continuance in Office."

Thus, a final factor possibly impacting the likelihood of whether the House of Representatives votes to impeach a federal judge is the amount of time the judge has served on the federal bench. I theorized that the longer a federal judge has served, the less likely it is that the House of Representatives will impeach. The results presented in Tables 17 and 18 meet my original expectations. These findings also include the number of impeachment inquiries of federal judges. Similar to the actual impeachments, the longer the tenure of a federal judge, the less likely the Judiciary Committee will begin an impeachment inquiry. Most importantly, if a judge has served 20 years or fewer, he or she is two times as likely to be impeached as those who have served for more than 20 years. For judges who served 0-20 years, there were 57 impeachment investigations, 12 (21%) of which resulted in impeachment. For judges who

served more than 21 years, there were eight impeachment investigations, one (12%) of which resulted in impeachment. Therefore, the fewer years of service on the bench increases the likelihood of impeachment for federal judges.

Specifically, there were nine federal judges out of 65 investigated that served less than five years. Of these nine judges, only one was impeached. However, for federal judges that served more than five years but less than ten years, 26 out of 65 (40%) were investigated. And, of those 26 federal judges serving six to ten years, nine were impeached (35%).

Ten judges investigated by the House of Representative served between eleven and fifteen years, and 12 judges investigated served between sixteen and twenty years. One impeachment occurred for each of these tenure time frames so the likelihood of impeach decreases as a federal judge's years of service increases on the federal bench.

As predicted, the shorter the tenure of a federal judge increases the likelihood of impeachment. Of the 65 impeachment inquiries of federal judges, only eight concerned a judge who served more than 21 years on the federal bench. Of those eight impeachment inquiries, only one occurred when a federal judge served on the bench for more than 30 years. Furthermore, there were no impeachments of a federal judge that served more than twenty-five years. In fact, the majority of inquiries (35 out of 65) and impeachments (10 out of 13) occurred when the federal judge had served ten or fewer years. Thus, the longer a federal judge serves, the less likely their impeachment inquiry will lead to impeachment.

Lifetime tenure for judges was considered important for the independence of the judiciary. Alexander Hamilton wrote in *The Federalist No. 78* that lifetime tenure for judges is "the best expedient which can be devised in any government," defending the Constitution's provision for judges to "hold their Offices during good Behavior." Of the wisdom of that

proposition, he added, "there can be no room for doubt." It was important for the Framers to grant lifetime tenure to federal judges. However, judges could still be removed through the process of impeachment. But, as the data show, the longer a judge serves on the bench, the less likely he is going to be impeached. (See Table 18) Thus, judges are indeed responding to the need to observe good behavior in order to stay on the federal bench.

Table 17
Tenure of Federal Judges

Years of Service	Number of judges investigated	% of judges investigated (out of 65)	Number of judges impeached	% of judges impeached (out of 13)
0-5	9	14	1	8
6-10	26	40	9	69
11-15	10	15	1	8
16-20	12	18	1	8
21-25	3	5	1	8
26-30	4	6	0	0
30+	1	2	0	0
Total	65		13	

Table 18
Comparison of Impeachment Outcomes between Judges Who Held Longer Tenure to Those Judges Who Held Shorter Tenure

Years of Service	Number of Impeachment Investigations	Number of Impeachments	% of Impeachments (out of the Total Number of Investigations)
0-20	57	12	21
21+	8	1	12

Conclusion

This study focused on the circumstances under which federal judges are impeached. More specifically, this study examines how Congressional court-curbing, election years, partisanship, crises, the allegation against the judge, and the length of tenure affect the likelihood of impeachment. After a systematic, empirical study of the impeachment of federal judges, we have a better understanding of the relationship between Congress and the judiciary, especially since impeachment is a power given to the House of Representatives to “check” the other branches.

In general, the political environment is important in determining whether or not a federal judge is impeached, just as it is important for nominations and confirmations of federal judges. Furthermore, the behavior of the federal judge is also important. The performance of a judge may impact the likelihood of impeachment.

More specifically, the conditions that increase the likelihood of an impeachment are election year, partisanship, criminal accusations, court-curbing and shorter tenure. For example, an impeachment is more likely to result during an election year, as eight impeachments out of 34 (24%) occurred compared to the five out of 31 (16%) during non-election years. And, if the federal judge served fewer than twenty years, the likelihood of impeachment is higher. For instance, there were 57 impeachment inquiries in which 12(21%) resulted in impeachment for federal judges who served on the bench for fewer than twenty years. The likelihood of impeachment for shorter tenure is greater since only 12% of the investigations resulted in impeachment for federal judges who served on the bench for more than twenty years. The other factors discussed in this paper, including court-curbing and partisanship also had an increase in

likelihood of impeachment. Ultimately, political issues and the judge's characteristics increase the likelihood of impeachment.

This research is important because it not only focuses on the understudied topic of federal judiciary impeachment, but it also shows the relevance and degree of several factors that help explain why Members of Congress impeach federal judges. The previous literature on impeachment for the most part focuses on executive branch members. This study will enhance previous research by providing a systematic empirical study of all federal judges. It is evident that a federal judge is more likely to be impeached if it is an election year and there are party differences between the nominating president and the majority party in Congress. On the other hand, if it is a time of crisis and a court-curbing period, the federal judge is less likely to be impeached. This means that certain circumstances need to be present in order for Members of the House to impeach a federal judge. In sum, the conditions that increase the likelihood of impeachment for a federal judge are: court-curbing, partisanship, election year, shorter tenure on the bench, and a criminal accusation against the judge.

References

- Adamany, David. "The Supreme Court," in The American Courts: A Critical Assessment (eds. Gates and Johnson) 5-34.
- Baum, Lawrence. "What Judges Want: Judges' Goals and Judicial Behavior." *Political Science Quarterly* 47: 749-768.
- Beck, Paul Allen. 1976. "Communication-Critical Elections and the Supreme Court: Putting the Cart after the Horse." *American Political Science Review* 70: 930-932.
- Benedict, Michael Les. 1973. "A New Look at the Impeachment of Andrew Johnson." *Political Science Quarterly* 88: 349-367.
- Berger, Raoul. 1973. *Impeachment: The Constitutional Problems*. Cambridge, Massachusetts: Harvard University Press.
- Binder, Sarah A., and Forrest Maltzman. 2002. "Senatorial Delay in Confirming Federal Judges, 1947-1988." *American Journal of Political Science* 46: 190-199.
- Bose, Meena. 2001. "Evaluating the Clinton Impeachment: Judicial, International, and Institutional Perspectives." *Congress & The Presidency* 28: 213-220.
- Bowman, Frank, O. 1999, "High Crimes & Misdemeanors: Defining the Constitutional Limits on Presidential Impeachment." *Southern California Law Review* 72: 1517-1600.
- Brant, Irving. 1972. *Impeachment: Trials & Errors*. New York: Knopf.
- Brookhiser, Richard. 1998. "Founding Principles: White House spin aside, America Was built on Virtue." *National Review*, December.
- Casper, Jonathan. 1976. "The Supreme Court and National Policy-Making." *American Political Science Review* 70: 50-63.
- Dougherty, J. Hampden. 1913. "Inherent Limitations Upon Impeachment." *Yale Law Journal* 23:60-87.
- Dwight, Theodore. 1867. "Trial by Impeachment." *American Law Register* 6: 263-269.
- Fields, Howard. 1978. *High Crimes and Misdemeanors*. New York: W. W. Norton & Company, Inc.
- Funston, Richard. 1975. "The Supreme Court and Critical Elections" *American Political Science Reivew* 69: 795-811.

- Gerhardt, Michael J. 2000a. *The Federal Impeachment Process: A Constitutional and Historical Analysis*. Chicago: The University of Chicago Press.
- Gerhardt, Michael J. 2000b. "The Special Constitutional Structure of the Federal Impeachment Process." *Law and Contemporary Problems* 245: 245-256.
- Ho, James C. 2000. "Misunderstood Precedent: Andrew Jackson and the Real Case Against Censure." *Harvard Journal of Law & Public Policy*, 24: 283-303.
- Jacobson, Gary C. 1999. "Impeachment Politics in the 1998 Congressional Elections." *Political Science Quarterly* 114:30-51.
- Lau, Richard R., Thad A. Brown, and David O. Sears. 1978. "Self-Interest and Civilians' Attitudes Toward the Vietnam War." *The Public Opinion Quarterly* 42: 464-483.
- Martinek, Wendy L., Mark Kemper, and Steven R. Van Winkle. 2002. "To Advise and Consent: The Senate and Lower Federal Court Nominations, 1977-1998." *Journal of Politics* 64: 337-361.
- Mayhew, David R. 1974. *Congress: The Electoral Connection*. New Haven: Yale University Press.
- McDowell, Gary L. 1999. "High Crimes and Misdemeanors: Recovering the Intentions The Founders." *George Washington Law Review* 67: 626-656.
- Melton, Buckner, F. Jr. 1998. *The First Impeachment: The Constitution's Framers and the Case of Senator William Blount*. Georgia: Mercer University Press.
- Miller, Warren E. and Donald E. Stokes. 1963. "Constituency Influence in Congress." *The American Political Science Review* 57: 45-56.
- Nagel, Stuart. 1965. "Court-Curbing Periods." *Vanderbilt Law Review* 18: 925-944.
- Pious, Richard M. 1998. "The Constitutional and Popular Law of Presidential Impeachment." *Presidential Studies Quarterly* 28: 806-815.
- Rehnquist, William H. 1992. *Grand Inquests: The Historic Impeachments of Justice Samuel Chase and President Andrew Johnson*. New York: William Morrow.
- Rodehamel, John. 1998. *The Great Experiment: George Washington and the American Republic*. Connecticut: Yale University Press.
- Rosenberg, Gerald N. 1992. "Judicial Independence and the Reality of Political Power." *The Review of Politics* 54: 369-398.

- Scherr, Arthur. 2002. "The Confidence of His Country: James Monroe on Impeachment." *The Midwest Quarterly* 44:27-44.
- Schmidhauser, John and Larry Berg. 1972. *The Supreme Court and Congress*. New York: Free Press.
- Segal, Jeffrey A. 1997. "Separation-of-Powers Games in the Positive Theory of Congress and Courts." *The American Political Science Review* 91: 28-44.
- Stelle, Robert C. 1999. "Defining High Crimes and Misdemeanors: A Call for Stare Decisis." *Journal of Law and Politics* 15: 309-376.
- Stumpf, Harry. 1965. "Congressional Responses to Supreme Court Rulings: The Interaction of Law and Politics." *Journal of Public Law* 14: 377-95.
- Thomas, David Y. 1908. "The Law of Impeachment in the United States." *The American Political Science Review* 2: 378-395.
- Tribe, Laurence H. 1999. "Defining 'High Crimes and Misdemeanors': Basic Principles." *George Washington Law Review* 67: 712-733.
- Turner, Lynn W. 1949. "The Impeachment of John Pickering." *American Historical Review* 54: 485-507.

Vita

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